

NO. 48652-1-II

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,  
Respondent,

v.

RAYMOND E. JENSEN,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR GRAYS HARBOR COUNTY

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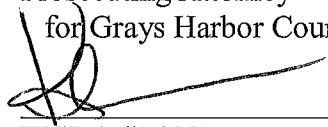
THE HONORABLE DAVID L. EDWARDS, JUDGE

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BRIEF OF RESPONDENT

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KATHERINE L. SVOBODA  
Prosecuting Attorney  
for Grays Harbor County



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WSBA #34097

OFFICE AND POST OFFICE ADDRESS  
County Courthouse  
102 W. Broadway, Rm. 102  
Montesano, Washington 98563  
Telephone: (360) 249-3951

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A. Response to Assignments of Error

1. The State proved beyond a reasonable doubt that the Appellant committed the crime of Theft in the Second Degree.
2. Because the Appellant's criminal conduct was proven beyond a reasonable doubt, the trial court's conclusions of law were appropriate.

B. Statement of the Case

The Appellant was introduced to Tawni Hickle through a mutual friend in March of 2015. RP 12. Angie Ostenson was dating the Appellant and made the introduction when the Appellant mentioned he had a horse trailer for sale. RP 7. Ms. Hickle and the Appellant exchanged text messages about the horse trailer, and they eventually met at the Grays Harbor County Fairgrounds. RP 7-9. At this meeting, Ms. Hickle gave the Appellant \$5,000 in cash as payment for the trailer. RP 9. Ms. Hickle did not receive any paperwork (receipt, bill of sale, title, etc.) from the Appellant. RP 10. Ms. Hickle never saw the horse trailer in person, but did receive a photograph from the Appellant purporting to be the trailer. RP 10, 13.

Between March 19 and April 23, Ms. Hickle and the Appellant exchanged text messages regarding the horse trailer. RP 12. However, the Appellant never delivered the horse trailer, nor did he return the money. RP 13-14. Ms. Ostenson became suspicious and did an image search on

Google that returned the same photograph provided by the Appellant. This image was associated with a trailer for sale in Ohio. PR 24. Miss Ostenson confronted the Appellant with this fact and he claimed that the trailer was in Pittsburg to be sold by family. Prior to this, he had stated the trailer was in Spokane, WA. RP 25-26.

Deputy Wecker testified that he also had used the image provided by the Appellant and done an image search regarding the trailer. He described this process as "...go to the Google webpage and upload a photograph that I had saved on my computer to search the Internet for a similar photograph..." RP 31. Through this process, Deputy Wecker located an ad showing the horse trailer for sale by someone other than the Appellant. Exhibit 10.

Based on the testimony, the trial court opined that:

...it is simply not credible to me that Mr. Jensen did all of this innocently, there's no way. This was a plan to steal money...And I look at these photographs that he provided to Ms. Ostenson and Ms. Hickle...Exhibit 4 is exactly the same photograph as in Exhibit 10. There is no it's like it or it might be the same or it looks similar. It is the same photograph. And we know where this one came from, Deputy Wecker got it from a Google search, which means anybody could get it. And this trailer was in Ohio, which is about the only place Mr. Jensen didn't claim this trailer was at various times when Ms. Hickle was trying to find it...

Based on this, the court entered findings of fact and conclusions of law convicting the Appellant of Theft in the Second Degree. CP 13-15.

C. Argument

The heart of the Appellant's argument is an assertion that there is insufficient evidence to prove that he committed the crime of Theft in the Second Degree. However, the evidence presented was that the Appellant offered to sell the victim a horse trailer that he did not own and was never in his possession.

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn. 2d 192, 201, 829 P.2d 1068, 1074 (1992) (citing *State v. Green*, 94 Wash.2d 216, 220–22, 616 P.2d 628 (1980).) "When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* (citing *State v. Partin*, 88 Wash.2d 899, 906–07, 567 P.2d 1136 (1977).) "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Id.* (citing *State v. Theroff*, 25 Wash.App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wash.2d 385,

622 P.2d 1240 (1980).) Appellate courts “defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence.” *State v. Homan*, 181 Wn. 2d 102, 106, 330 P.3d 182, 185 (2014) (citing *State v. Jackson*, 129 Wash.App. 95, 109, 117 P.3d 1182 (2005).)

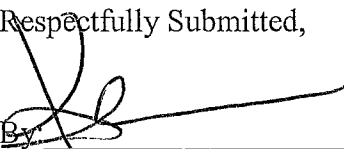
The evidence in this case shows, beyond a reasonable doubt, that the Appellant concocted a scheme to try and sell a trailer that he did not own. He could not contract to sell something that was never his. Further, it was only due to the Appellant’s deception that the victim parted with her money.

D. Conclusion

The evidence is sufficient to support a conviction in this matter, and the trial court’s findings and conclusions are supported by the record.

DATED this 15 day of December, 2016.

Respectfully Submitted,

By 

# GRAYS HARBOR COUNTY PROSECUTOR

**December 01, 2016 - 3:29 PM**

## Transmittal Letter

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Court of Appeals Case Number: 48652-1

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### Comments:

No Comments were entered.

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A copy of this document has been emailed to the following addresses:

[liseellnerlaw@comcast.net](mailto:liseellnerlaw@comcast.net)